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CHARLES E. MORE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 528.

BANQUE MELLIE IRAX,

Petitioner.

against

ELLIOTT V. BELL, as Superintendent of Banks of the State of New York, as Liquidator of the business and property of The Yokohama Specie Bank, Ltd., in the State of New York,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

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Statement.

Respondent, the Superintendent of Banks of the State of New York, heretofore filed a petition in this Court (No. 513) for review of the decision of the Court of Appeals of the State of New York in *Banque Mellie Iran v. The Yokohama Specie Bank, Ltd.*, insofar as it held that the provisions of Executive Order No. 8389 did not render void a claim arising out of a transaction prohibited by that Order. Plaintiff in that action has now filed a cross-petition in which it seeks review of that portion of the decision which held that a license of the transaction underlying plaintiff's claim is required before payment can be made to plaintiff. This brief is submitted in opposition to the cross-petition.

Facts.

The facts with respect to the questions under discussion were summarized at pages 4 to 11 of the Superintendent's petition (No. 513) and accordingly will not be repeated here.*

Argument.

Plaintiff asks this Court to review the holding of the New York Court of Appeals that neither the Treasury license of January 14, 1942 [Leary, Ex. B (R. 194)] nor the Treasury letter of October 29, 1942 [Leary, Ex. A (R. 192)] licensed the payment of plaintiff's claim.** The decision of the New York Court upon these matters speaks for itself and, therefore, need not be elaborated on here.

It should be noted, however, that plaintiff's position with respect to these licenses is based upon the same erroneous assumption that underlies plaintiff's argument in the *Singer* case, i.e., that Executive Order No. 8389 serves to prevent only the *payment*, rather than the *accrual*, of claims based upon prohibited transactions. Our comments with respect to this matter are set forth at length in the brief filed by us in opposition to plaintiff's petition in the *Singer* case (No. 527), and we respectfully refer this

* In its statement of facts plaintiff fails to indicate that the funds which it paid to the New York Agency were transmitted abroad by the Agency prior to the imposition of freezing controls [R. 351]. As a result of such transmittal, plaintiff's right of recovery is dependent upon whether the attempted re-transmission of those funds to New York subsequent to the freeze created a claim against the Agency within the doctrine of the *Singer* case (No. 512). See Superintendent's petition (No. 513), pp. 5 to 11.

** Plaintiff seeks such relief only in the event that the Superintendent's application for a writ (No. 513) is granted.

Court to that brief for our views upon this subject. A copy of our *Singer* brief will be served upon the attorneys for the plaintiff in this action.

It is respectfully submitted that for the foregoing reasons the plaintiff's petition for a writ of certiorari should be denied.

Respectfully submitted,

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